

UNCLAS SECTION 01 OF 02 BOGOTA 006382

SIPDIS

E.O. 12958: N/A

TAGS: KJUS PREL PGOV CO

SUBJECT: Colombian FM Defends Immunity

¶1. (U) Summary. On June 27, Colombian Foreign Minister Carolina Barco responded to Inspector General (Procurador) Edgardo Maya's written request to submit for congressional approval the 1974 "Agreement between the Government of the Republic of Colombia and the Government of the United States related to an Army Mission, a Navy Mission, and an Air Mission of the Military Forces of the United States of America in the Republic of Colombia." Maya's message was sparked by his interest in charging U.S. military officials implicated in narcotrafficking and munitions sales earlier this year under Colombian law. Barco makes it clear that, based on multiple international conventions and agreements, the soldiers cannot be tried under Colombian law and that the agreement will not be submitted to Congress. She passed a copy of her response to the Ambassador on June 28 for our records. A scanned copy has been sent to WHA and L. End summary.

¶2. (U) Begin unofficial translation:

Bogota, June 27, 2005

Mr. EDGARDO JOSE MAYA VILLAZON
Inspector General
Inspector General's Office of the Republic
City

Honorable Inspector General:

With full attention I respond to your note DP-0462 presented to the Presidency of the Republic on May 23, related to your request to submit for congressional approval, the "Agreement between the Government of the Republic of Colombia and the Government of the United States related to an Army Mission, a Navy Mission, and an Air Mission of the Military Forces of the United States of America in the Republic of Colombia," signed in Bogota on October 7, 1974. Allow me to transmit the following information:

The Agreement concluded according to the norms in effect at the time of signature, such as:

- Political Constitution of Colombia of 1886, article 120 number 20, and article 76 number 18
- Law 7 of 1944
- Law 24 of 1959
- Inter American Treaty of Reciprocal Assistance - IATR, of September 2, 1974, approved by the Law 52 of 1947, in force for Colombia since December 3, 1948
- Havana Convention of 1928 on Rights and Duties of Diplomatic Officials, approved by the Law 41 of 1936, in force for Colombia since February 20, 1937
- Vienna Convention on Diplomatic Relations, approved by Law 6 of 1972, in force for Colombia since May 5, 1973

Likewise, under the observance of the International Customary Practices, which is the source of International Law, and in that era had some practices codified in international conventions:

- Vienna Convention of 1969 on the Law of the Treaties (approved by the Law 32 of 1985, in force for Colombia since May 10, 1985)
- New York Convention of 1969 regarding Special Missions (approved by the Law 824, 2003, and ratified by Sentence C-315 of 2004, in force for Colombia since November 28, 2004)

According to the rules mentioned above, the Agreement is connected to the norms of a Simplified Agreement that, being developed and derived from a treaty or a framework agreement approved under domestic procedure, and under the observance of code custom and the exercise of the Executive's exclusive capacity of concerting with other States with credited Missions, it neither required nor requires internal procedural approval to become valid and to have full application.

Indeed, through the Agreement, the creation of "Special Missions" as an expansion of a Permanent Diplomatic Mission, with the respective equivalences, can be interpreted from article 11 of the Agreement.

It is important to stress that previous National Governments agreed with the notion that simplified agreements should take place; a premise that has been endorsed by the High Courts, as well as admitted and defended by the Inspector General's Office of the Nation.

The constitutional and juridical conditions have not varied and,

on the contrary, International Law and the Law of Treaties have evolved, a situation recognized by the Colombian Courts, who have developed the concept of simplified agreements fully, reaffirmed the principle of exclusion from domestic law official procedures, given that the agreement is derived from framework instruments and do not create new obligations for the State, or that they are executed through duties exclusive to the President of the Republic, thus able to become operative and executable starting from the moment of signature.

Regarding the possibility of nullifying the Agreement, we examined the processes of discussion and execution, and do not find that the Agreement falls into one of the nullity clauses contemplated in the Vienna Convention of 1969 on the Law of Treaties and that could be invoked by Colombia. Such clauses are precise and they cannot be used unilaterally.

Consequently, in light of the rights and principles of the International Law when the Agreement became effective, and according to the principle "Pacta Sunt Servanda" Colombia's compliance with the agreement is mandatory; the Colombian State cannot invoke domestic law as a valid cause of non-fulfillment of Agreement and international commitments.

Finally, for your information, I have attached a list of the agreements submitted for approval by the procedure outlined in Law 24 of 1959.

Sincerely,

/s/
CAROLINA BARCO ISAKSON
Minister of Foreign Relations

End unofficial translation.

13. (U) Embassy has passed a scanned version to L and WHA for review.
WOOD